

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

Bea Majeski,

Plaintiff,

v.

Credit Acceptance Corporation,

Defendant.

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Civil Action No.: _____

DEMAND FOR JURY TRIAL

COMPLAINT & JURY DEMAND

For this Complaint, Plaintiff, Bea Majeski, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").
2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendant transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

3. Plaintiff, Bea Majeski ("Plaintiff"), is an adult individual residing in Little Falls, Minnesota, and is a "person" as defined by 47 U.S.C. § 153(39).
4. Defendant, Credit Acceptance Corporation ("CAC"), is a Michigan business entity with an address of 25505 West 12 Mile Road, Southfield, Michigan 48034-8316, and is a "person" as defined by 47 U.S.C. § 153(39).

FACTS

5. In 2015, CAC began calling Plaintiff's cellular telephone number.

6. When Plaintiff answered calls from CAC, she heard an automated message that instructed her to call CAC.

7. The foregoing is indicative of a predictive dialer, an automatic telephone dialing system (“ATDS”) under the TCPA.

8. In or around September 2015, Plaintiff directed CAC to cease all calls to her cellular telephone number.

9. Nevertheless, CAC continued to place automated calls to Plaintiff’s cellular telephone number.

COUNT I
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, et seq.

10. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

11. At all times mentioned herein, Defendant called Plaintiff’s cellular telephone number using an ATDS or predictive dialer and/or using an artificial or prerecorded voice.

12. In expanding on the prohibitions of the TCPA, the Federal Communications Commission (“FCC”) defines a predictive dialer as “a dialing system that automatically dials consumers’ telephone numbers in a manner that “predicts” the time when a consumer will answer the phone and a [representative] will be available to take the call...”*2003 TCPA Order*, 18 FCC 36 Rcd 14022. The FCC explains that if a representative is not “free to take a call that has been placed by a predictive dialer, the consumer answers the phone only to hear ‘dead air’ or a dial tone, causing frustration.” *Id.* In addition, the TCPA places prohibitions on companies that “abandon” calls by setting “the predictive dialers to ring for a very short period of time before disconnecting the call; in such cases, the predictive dialer does not record the call as having been abandoned.” *Id.*

13. Defendant's telephone system(s) have all the earmarks of a predictive dialer.
14. When Plaintiff answered calls from Defendant, she heard an automated message.
15. Defendant's predictive dialers have the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.
16. The telephone number called by Defendant was assigned to a cellular telephone service for which Plaintiff incurs charges pursuant to 47 U.S.C. § 227(b)(1).
17. Plaintiff was annoyed, harassed and inconvenienced by Defendant's continued calls.
18. Defendant placed automated calls to Plaintiff's cellular telephone number despite knowing that it lacked consent to do so. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).
19. The calls from Defendant to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).
20. As a result of each of Defendant's negligent violations of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call placed in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).
21. As a result of each of Defendant's knowing and/or willful violations of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 for each and every violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);

2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: September 14, 2016

Respectfully submitted,

By: /s/ Sergei Lemberg, Esq.
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